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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SCOTT DODICH and JAYME GOTTS-
DODICH, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff(s),

v.

NIANTIC, INC., THE POKÉMON COMPANY,
and NINTENDO CO. LTD.,

Defendants.

Civil Action No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Scott Dodich and Jayme Gotts-Dodich (collectively, “Plaintiffs”), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, for their complaint against Defendants Niantic, Inc. (“Niantic”), The Pokémon Company (“Pokémon Co.”), and Nintendo Co. Ltd. (“Nintendo”) (collectively, “Defendants”), allege the following based upon personal knowledge as to themselves and their own acts, and information and belief as to all other matters. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

PRELIMINARY STATEMENT

1. This is a class action against Defendants, arising from the popular *Pokémon Go* mobile game, developed by Niantic and based on a media franchise co-owned by Nintendo and marketed and licensed by Pokémon Co., with millions of players worldwide.

2. *Pokémon Go* is the latest iteration of the immensely popular Pokémon media franchise, which consists in large part of a series of video games in which players take on the role of “trainers” with the goal of capturing and collecting fantasy creatures called Pokémon. Released on July 6, 2016 in the United States, *Pokémon Go* is an “augmented reality” game in which players use their smart phones to “catch” Pokémon in the players’ real-world surroundings by utilizing the GPS, camera, and gyroscope features on users’ mobile devices. When a player comes in close proximity to GPS coordinates determined by a Niantic algorithm, the game uses the phone’s camera mode and gyroscope to display the image of a Pokémon, superimposed over the real-world image displayed on the player’s phone screen, as though the Pokémon existed in the real world. (See Figure 1.) By swiping their phone screens, players may then attempt to “catch” the Pokémon to add it to their virtual collections.



Figure 1

1 3. When the game detects, via GPS, that players are in the vicinity of certain real-
2 world locations, the GPS coordinates of which were selected and programmed into the mobile
3 application by Niantic and known to *Pokémon Go* players as “Pokéstops” and “Pokémon gyms,”
4 the players gain access to potentially vital in-game items, which they can use to catch Pokémon,
5 among other purposes, or gain the opportunity to engage in virtual “battles” with other *Pokémon*
6 *Go* players.

8 4. *Pokémon Go* was an immediate success. As of July 23, *Pokémon Go* had been
9 downloaded more than 30 million times and had earned more than \$35 million in revenue.
10 According to Apple, Inc. (“Apple”), owner of the App Store (a digital distribution platform for
11 mobile applications), *Pokémon Go* was downloaded more times in its first week than any other
12 mobile application in history. At the time this complaint was filed, mobile users were spending
13 more time playing *Pokémon Go* than using other popular applications such as Facebook, Twitter,
14 WhatsApp, Instagram, and Snapchat.

16 5. However, within days of the game’s release, it became clear that a number of the
17 GPS coordinates that Defendants had designated as Pokéstops and Pokémon gyms were, in fact,
18 on or directly adjacent to private property, and that Defendants had placed these Pokéstops and
19 Pokémon gyms on private property *without the consent of the properties’ owners*.

21 6. Plaintiffs reside on Revere Street, a private cul-de-sac, in the city of St. Clair
22 Shores, Michigan. Across the street from Plaintiffs’ home is Wahby Park, a small municipal
23 park. In early July, shortly after the release of *Pokémon Go*, Plaintiffs noticed a significant
24 increase in the number of visitors to Wahby Park, from an estimated 15 to 20 visitors at any
25 given time to at least several hundred, most of whom were visibly using their mobile phones.
26
27
28

1 Plaintiffs soon learned that Defendant Niantic had placed a Pokémon Gym and at least seven
2 Pokéstops on the park, and had placed Pokémon on Plaintiffs' property as well.

3 7. Over the next several weeks, Plaintiffs' once-quiet street degenerated into "a
4 nightmare" for Plaintiffs and their neighbors. Many of the visitors who flooded the park in
5 search of Pokémon paid scant attention to the property boundaries of Plaintiffs and other
6 residents of Revere Street, and likewise disregarded the clearly posted sign advising that Revere
7 Street was a private road, with parking for residents and their guests only. *Pokémon Go* players
8 parked their cars in front of Plaintiffs' and their neighbors' homes, blocking their driveways.
9 *Pokémon Go* players trespassed on Plaintiffs' and their neighbors' lawns, trampling their
10 landscaping and peering into their windows. When Mrs. Gotts-Dodich asked a *Pokémon Go*
11 player to leave her property, she was told to "shut up B****, or else."

14 8. In late July, Plaintiffs requested the removal of the Pokéstops and Pokémon Gym
15 that Niantic had placed near their home, using the designated request form on the company's
16 website. In response, they received only an automated form reply: "Thank you for reporting this
17 PokéStop/Gym. We will review and take appropriate action. You'll receive a follow-up email
18 once your request has been reviewed."

20 9. Days later, Plaintiffs had yet to receive the promised response from Niantic, and
21 submitted two more requests via emails to Niantic's legal department and directly to Niantic's
22 Chief Executive Officer ("CEO") John Hanke (using an email address found online), describing
23 to Niantic the conditions the company's actions had created on Revere Street. The emails told
24 Niantic that the Pokéstops and Pokémon gyms had "creat[ed] havoc"; that *Pokémon Go* players
25 "are on our lawns . . . looking right into our windows to catch a Pokemon"; that Plaintiffs had
26 been threatened by *Pokémon Go* players and "don't feel safe sitting on our porch"; and that after
27
28

1 the park closed at sundown, players “hid[e] on our street or in the bushes, then come right back
2 once police leave.”

3 10. In response to this detailed litany of grievances, Plaintiffs again received only a
4 generic form reply, thanking Plaintiffs again for contacting Niantic and directing them to “visit
5 the help center[.]” for *Pokémon Go* on Niantic’s website.

6
7 11. Several days later, after once again receiving no follow-up from Niantic, Plaintiffs
8 sent a similar email to yet another Niantic email address. Once again, Plaintiff received no reply
9 beyond a generic form response. At the time of the filing of this complaint, Niantic has yet to
10 respond to Plaintiffs or to remove the Pokéstops and Pokémon gyms at issue, and Plaintiffs and
11 their neighbors continue to describe conditions on Revere Street as “a nightmare.”

12
13 12. Plaintiffs’ situation is far from unique. Indeed, in the weeks following the release
14 of *Pokémon Go*, it quickly became apparent that Niantic had designated properties as Pokéstops
15 and Pokémon gyms without seeking permission from property owners and with flagrant
16 disregard for the foreseeable consequences of doing so. Shortly after the game’s release, an
17 individual whose Massachusetts home Niantic designated as a Pokémon gym reported more than
18 15 uninvited visitors in the space of only a few hours, and many more visitors over the following
19 days. An Alabama cemetery complained that the presence of *Pokémon Go* players was
20 detracting from the cemetery’s decorum. Indeed, *Niantic even placed three Pokéstops within*
21 *the United States Holocaust Memorial Museum* in Washington, D.C., prompting a complaint
22 from the museum.

23
24 13. The intentional, unauthorized placement of Pokéstops and Pokémon gyms on or
25 near the property of Plaintiffs and other members of the proposed class constitutes a continuing
26 invasion of the class members’ use and enjoyment of their land, committed by Niantic on an
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1 ongoing basis for Defendants' profit. Moreover, Niantic has thus far ignored repeated requests
2 to remove the Pokéstops and Pokémon gyms at issue. On the basis of the foregoing acts and
3 practices, Defendant Niantic is liable for nuisance and all Defendants have been unjustly
4 enriched.

5 **JURISDICTION AND VENUE**

6
7 14. The Court has subject matter jurisdiction over this action pursuant to the Class
8 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the aggregate amount in controversy
9 exceeds \$5,000,000.00 and there is diversity between a plaintiff and a defendant.
10

11 15. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant
12 Niantic is headquartered in this district and a substantial part of the events giving rise to the
13 claim occurred within this district.

14 **PARTIES**

15 16. Plaintiffs Scott Dodich and Jayme Gotts-Dodich are residents of St. Clair Shores,
16 Michigan. As described *supra* at ¶¶ 6-11, Defendant Niantic's placement of Pokémon on and
17 near Plaintiffs' property caused *Pokémon Go* players to interfere with Plaintiffs' use and
18 enjoyment of their property.
19

20 17. Defendant Niantic, Inc. is a software development company headquartered in San
21 Francisco, California 94105. The company was formed in 2002 as Niantic Labs, an internal
22 startup at Google Inc., and spun off as an independent entity in October 2015. Niantic is the
23 developer and publisher of *Pokémon Go*. Niantic receives a percentage of all revenues generated
24 by *Pokémon Go* mobile application.
25

26 18. Defendant The Pokémon Company is responsible for marketing and licensing the
27 Pokémon franchise. Pokémon Co. is headquartered in Tokyo, Japan, and was established as a
28

1 joint venture by Nintendo and the two other companies holding the copyright on Pokémon
 2 (Game Freak and Creatures). Defendant Nintendo holds a 32% ownership stake in Pokémon Co.
 3 Pokémon Co. receives a percentage of all revenues generated by the *Pokémon Go* mobile
 4 application.
 5

6 19. Defendant Nintendo Co., Ltd. is a multinational consumer and electronics
 7 software company headquartered in Kyoto, Japan. Founded in 1889 as a playing card company,
 8 Nintendo entered the video game industry in the 1970s and today is the world's largest video
 9 game company by revenue. Nintendo is the publisher of the popular Pokémon video game series
 10 and, as described *supra* at ¶ 18, owns a 32% stake in Defendant Pokémon Co. Nintendo receives
 11 a percentage of all revenues generated by the *Pokémon Go* mobile application.
 12

13 **SUBSTANTIVE ALLEGATIONS**

14 **Background**

15 20. Created in 1995 by the Japanese video game designer Satoshi Tajiri, the Pokémon
 16 media franchise consists in large part of video games centered on fictional creatures called
 17 Pokémon. A player's goal in Pokémon games is generally to capture as many Pokémon as
 18 possible—indeed, Pokémon's English language slogan is “Gotta Catch ‘Em All”—and have the
 19 Pokémon battle one other for sport. Published by Nintendo, the Pokémon video games have sold
 20 more than 200 million copies worldwide.
 21

22 ***Pokémon Go***

23 21. On July 6, 2016, Niantic released *Pokémon Go*, the latest installment of the
 24 Pokémon video game series, as a mobile phone application in the United States. As with earlier
 25 Pokémon games, the object of *Pokémon Go* is to collect as many Pokémon as possible. Unlike
 26 previous Pokémon games, however, *Pokémon Go* took advantage of various mobile phone
 27
 28

1 technologies—including GPS, camera, and gyroscope features—to create an “augmented reality”
2 gaming experience, in which players discover and capture Pokémon by physically exploring
3 their surroundings.

4
5 22. When a player comes in close proximity to GPS coordinates determined by a
6 Niantic algorithm, the game uses the phone’s camera mode and gyroscope to display the image
7 of a Pokémon, superimposed over the real-world image displayed on the player’s phone screen,
8 as though the Pokémon existed in the real world. (See Figure 1.) By swiping their phone
9 screens, players may then attempt to “catch” the Pokémon to add it to their virtual collections.

10
11 23. Additionally, Niantic selected and programmed into *Pokémon Go* the GPS
12 coordinates of certain real world locations, designating them as “Pokéstops” and “Pokémon
13 gyms.” At Pokéstops, players gain access to potentially vital in-game items, which they can use
14 to catch Pokémon. In Pokémon gyms, players gain the opportunity to engage in virtual battles
15 with other *Pokémon Go* players, success in which advances the player’s progress through the
16 game.

17
18 24. *Pokémon Go* was an immediate success and has been highly profitable for
19 Defendants. As of July 23, 2016, *Pokémon Go* had been downloaded more than 30 million times
20 and had earned more than \$35 million in revenue. According to Apple, *Pokémon Go* was
21 downloaded more times in its first week than any other mobile application in history. At the
22 time this complaint was filed, mobile users were spending more time playing *Pokémon Go* than
23 using other popular applications such as Facebook, Twitter, WhatsApp, Instagram, and Snapchat.

24 25 **Placement of Pokéstops and Pokémon Gyms on Private Property**

26 25. Within days of the game’s release, it became clear that a number of the GPS
27 coordinates that Defendants had designated as Pokéstops and Pokémon gyms were, in fact, on or
28

1 directly adjacent to private property, and that Defendants had placed these Pokéstops and
2 Pokémon gyms *without the consent of the properties' owners*.

3 26. As described *supra* at ¶ 6, Plaintiffs reside on Revere Street, a private cul-de-sac,
4 across from Wahby Park, in St. Clair Shores, Michigan. In early July, shortly after the release of
5 *Pokémon Go*, Plaintiffs noticed a significant increase in the number of visitors to Wahby Park,
6 from an estimated 15 to 20 visitors at any given time to at least several hundred, most of whom
7 were clearly focused on their mobile phones. (See Figure 2.) Plaintiffs soon learned that
8 Defendant Niantic had placed at least seven Pokéstops and one Pokémon Gym on the park. (See
9 Figure 3.) In fact, Wahby Park topped the website *Click On Detroit*'s list of "Best places to play
10 Pokémon Go in Metro Detroit," which described "[h]undreds of people walking around At
11 least six Pokestops, all constantly lured".
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24 *Figure 2*
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Figure 3
An in-game map of Wahby Park and Revere Street (to the left),
displaying at least seven Pokéstops and one Pokémon Gym.

27. Over the next several weeks, Plaintiffs' once-quiet street degenerated into "a nightmare" for Plaintiffs and their neighbors. Many of the visitors who flooded the park in search of Pokémon paid scant attention to the property boundaries of Plaintiffs or other residents of Revere Street, and likewise disregarded the clearly posted sign advising that Revere Street was a private road, with parking for residents and their guests only. *Pokémon Go* players parked their cars in front of Plaintiffs' and their neighbors' homes, blocking their driveways. (See Figure 4.) *Pokémon Go* players trespassed on Plaintiffs' and their neighbors' lawns, trampling their landscaping and peering into their windows. (See Figure 5.) When Mrs. Gotts-Dodich asked a *Pokémon Go* player to leave her property, she was told to "shut up B****, or else."



Figure 4



Figure 5

28. On or around July 25, 2016, Plaintiffs requested the removal of the Pokéstops and Pokémon Gym that Niantic had placed near their home, using the designated request form on the company's website. In response, they received only an automated form reply: "Thank you for

1 reporting this PokéStop/Gym. We will review and take appropriate action. You'll receive a
 2 follow-up email once your request has been reviewed."

3 29. Two days later, on July 27, 2016, Plaintiffs had yet to receive the promised
 4 response from Niantic, and submitted two more requests—this time, via emails directly to
 5 Niantic's legal department and John Hanke, Niantic's CEO. The emails described to Niantic the
 6 conditions the company's actions had created on Revere Street, and stated, in part:

8 At any given moment there are at least a couple of hundred people in the park
 9 play[ing] this game, compared to the average of at least 15-20 in the park. The
 10 [Pokéstops and Pokémon gyms] . . . [are] an *open invitation for the players to*
 11 *utilize our street, our lawns, looking in our windows . . . and so forth. There are*
 12 *at least 30 homes . . . that are affected by this. These players are loud, make*
 13 *threats, [are] intrusive, and I do not feel safe.* My husband and I moved to our
 14 home almost two years ago because it was peaceful, quite, and safe. *When I see*
 15 *people driving slow, looking into our home, walking on our property, looking*
 16 *into our vehicles, we do not feel safe.* Neither do the neighbors.

17 . . .

18 With all the traffic it is hard to tell who is playing the game, or casing out our
 19 street/park, someone who is looking to rob, rape or any other harm. . . .

20 *They park along our street that borders Wahby Park, we ask them to move and*
 21 *get threats and attitudes. I was threatened by a man who refused to leave. He*
 22 *was parked in front of my home. I had hardly any room to back out of my*
 23 *driveway.* Mind you, he was also parked the wrong way on the street.

24 . . .

25 I truly hope you will take this into consideration, the news has already been in the
 26 park twice, and have interviewed neighbors on this issue.

27 (Emphases added.)

28 30. In response to this litany of detailed grievances—which reported trespassing and
 personal threats, and expressed concerns about robbery and rape—Plaintiffs again received only
 a generic form reply, thanking Plaintiffs again for contacting Niantic and directing them to “visit
 the help center[]” for *Pokémon Go* on Niantic's website.

31. Once again, Plaintiffs did not receive any follow-up from Niantic. Accordingly,
 on August 1, 2016, Plaintiffs wrote yet another email to the company:

1 *The past few weeks have been an absolute nightmare* for not only my husband
 2 and I, but for the residents on our street as well. Almost two years ago my
 3 husband and I moved into our home, not knowing how drastically our once quiet,
 safe, and peaceful street has gone to the complete opposite.

4 . . .
 5 Most recent I am seeking help for anxiety, I believe I will call it that and am
 6 seeking help. I guess you could say I had a nervous breakdown, never had to
 encounter this feeling in my life. *We have veterans with PTSD and this traffic is
 getting to them as well.*

7 *Nobody gets sleep anymore. Constantly have to protect our homes from people
 8 on our property that invade, all because of the stops/gyms.* I will highlight the
 issues we are having:

9 **Privacy:** Since our street borders the park, our privacy has been taken away from
 10 us. *The stops/gyms border directly on our street, causing the gamers to take over
 11 our property as well as the parks. They are on our lawns, with the newest being
 12 looking right into our windows. How is this acceptable? They hang out on our
 13 lawns, trample landscaping, look in vehicles,* hang out in the middle of the street
 looking at our homes while playing their game, so I hope. We ask them to leave
 but 75% percent of the time, they ignore us or call us names. . . .

14 **Safety:** Along with our privacy being violated, our safety is a concern too. Our
 15 street is narrow, we have elderly, and special needs children that require a lot of
 16 care. It is not uncommon for an ambulance go down the street frequently. It is not
 17 safe for cars to be blocking emergency vehicles to get down the street to assist
 18 people that need care. *We don't feel safe having people on our property looking
 19 into our home. Nor do we feel safe with random vehicles parking, driving slow,
 20 and hanging out on our street. We don't know who is playing the game, who is
 21 looking at our homes to break in or steal, who is a pedophile or rapist. I don't
 feel safe sitting on our porch, something we love to do.* We have gotten heckled
 and yelled at for calling the police and we didn't ever do so. *I have been
 threatened because I asked someone to leave, he said shut up b**** or else.*
 What does or else mean?

22 **Traffic control:** We are a private street, with that being said the police cannot
 23 ticket or have vehicles removed. All day is constant traffic, either parking on the
 24 street or just driving real slow to catch the Pokemon, or just stop right in the
 25 middle of the street. When we ask these unwanted guests to leave, we are
 26 threatened, they don't listen, give attitude, and leave when they want, this goes on
 all night. *Blocking driveways, parking on the wrong side of the street, sitting in
 driveways, you name it they are doing it.*

27 Look at the traffic in the park, even after dark. They scatter when it is time to
 28 leave, *hiding on our street or in the bushes,* then come right back once police
 leave.

32. Once again, Plaintiff received no reply beyond a generic form response. At the time of the filing of this complaint, Niantic has yet to respond to Plaintiffs' concerns or to remove the Pokéstops and Pokémon gyms at issue, and Plaintiffs and their neighbors continue to describe conditions on Revere Street as "a nightmare."

33. Plaintiffs' experience is not unique. In a series of tweets on July 9, 2016, Boon Sheridan, a resident of Holyoke, Massachusetts, reported that Niantic had placed a Pokémon gym in his home. (See Figure 6.)



Figure 6

34. By mid-afternoon that day, Sheridan reported that "I've counted 15 people stopping by and lingering in their phones so far. I think at least three car visits as well." (See Figure 7.)



Figure 7

35. In an interview with the online publication *Buzzfeed*, Sheridan "said it is a little odd that *he has no control over his home being a significant part of the game, and never signed off on being included.*" (Emphases added.)

36. Likewise, as reported in the online videogame publication *Gamerant*, Niantic

placed a Pokéstop at a private residence in Albuquerque, New Mexico, already famous as a filming location for the television show *Breaking Bad*. *Gamerant's* article stated, in part, that the home's "yard is being besieged by intrepid *Pokémon Go* trainers who may not be aware they're stepping onto private property."

37. Indeed, Defendants have shown a flagrant disregard for the foreseeable consequences of populating the real world with virtual Pokémon without seeking the permission of property owners. Niantic placed *at least three Pokéstops within the United States Holocaust Memorial Museum* in Washington, D.C. (see Figure 8), prompting the museum to state that "Playing the game is not appropriate in the museum, which is a memorial to the victims of Nazism. We are trying to find out if we can get the museum excluded from the game." Similarly, a representative of Mobile Memorial Gardens, a cemetery in Mobile, Alabama, has objected to the presence of *Pokémon Go* players on its property, stating "This is private. I owe it to the families we serve to provide a sense of decorum here."



Figure 8

38. Niantic has blithely acknowledged its placement of Pokéstops on private property,

advising users on the *Pokémon Go* website: “If you can’t get to the Pokéstop because it’s on private property, there will be more just around the corner, so don’t worry!”¹ (See Figure 9.)



Figure 9

39. *Pokémon Go* has been immensely profitable for the Defendants, each of which receives a percentage of revenues generated by the game. The game’s profitability derives from its popularity, which, in turn, derives in large part from its innovative augmented reality experience, in which playing *Pokémon Go* turns a user’s surroundings into a virtual world of beacons to be activated and Pokémon to be captured.

40. To create that immersive world, Niantic made unauthorized use of Plaintiffs’ and other Class members’ property by placing Pokéstops and Pokémon gyms thereupon or nearby. In so doing, Niantic has encouraged *Pokémon Go*’s millions of players to make unwanted incursions onto the properties of Plaintiffs and other members of the class—a clear and ongoing invasion of their use and enjoyment of their land from which Defendants have profited and continue to profit.

¹ <https://www.nianticlabs.com/terms/pokemongo/en>, accessed on July 22, 2016.

CLASS ACTION ALLEGATIONS

41. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2) and/or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

42. The proposed nationwide class (the “Class”) Plaintiffs seek to represent is defined as follows:

All persons in the United States who own property (i) the GPS coordinates of which were designated by Defendants, without authorization, as Pokéstops or Pokémon gyms in the *Pokémon Go* mobile application or (ii) abutting property the GPS coordinates of which were designated by Defendants, without authorization, as Pokéstops or Pokémon gyms in the *Pokémon Go* mobile application.

43. Excluded from the Class are the Defendants; any entity or division in which they have a controlling interest; their legal representatives, officers, directors, assignees, and successors; and their current or former employees. Plaintiffs reserve the right to amend the Class definitions and to add additional sub-Classes as appropriate if discovery and further investigation reveal that the Class should be expanded, otherwise divided into sub-Class, or modified in any other way.

Numerosity & Ascertainability

44. Although the exact number of Class members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable.

1 45. The disposition of the claims of these Class members in a single action will
2 provide substantial benefits to all parties and to the Court. Class members are readily
3 identifiable from information and records in Defendants' possession, custody, or control.
4

5 **Typicality**

6 46. Plaintiffs' claims are typical of the claims of Class, as Plaintiffs and the other
7 members of the Class sustained damages arising out of the same wrongful conduct by
8 Defendants, as alleged herein.
9

10 **Adequate Representation**

11 47. Plaintiffs will fairly and adequately represent and protect the interests of the
12 Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex and
13 class action litigation nationwide.

14 48. Plaintiffs and their counsel are committed to vigorously prosecuting this action
15 on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their
16 counsel have interests adverse to those of the Class.
17

18 **Predominance of Common Issues**

19 49. There are numerous questions of law and fact common to Plaintiffs and Class
20 members that predominate over any question affecting only individual Class members, the
21 answer to which will advance resolution of the litigation as to all Class members. These common
22 legal and factual issues include, *inter alia*:
23

- 24 a. whether Defendants designated GPS coordinates located on or near private
25 property as Pokéstops or Pokémon gyms;
- 26 b. whether Defendants' conduct constituted a trespass and/or nuisance at
27 common law and if so, what remedies are available by law;
28

- c. whether Defendants were unjustly enriched by their actions as alleged herein;
- d. whether the Court should enjoin Defendants from continuing to engage in the conduct complained of herein;
- e. the appropriate measure of relief, including, but not limited to, a preliminary and/or permanent injunction; and
- f. the extent of the damages caused by Defendants' acts.

Superiority

35. Plaintiffs and other Class members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

36. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class members' claims, it is likely that few if any Class members could afford to seek legal redress for Defendants' misconduct as alleged herein. Absent a class action, Class members will continue to incur damages, and Defendants' misconduct will continue without remedy.

37. Class action treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class action treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

COUNT I
(Nuisance)
(Brought on Behalf of Plaintiffs and the Class
against Niantic)

38. Plaintiff repeats, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

39. At common law, an invasion of one's use and enjoyment of their land, if repeated or of long duration, constitutes a nuisance.

40. As described above, via designation of specific GPS coordinates, Niantic intentionally placed virtual Pokéstops and Pokémon gyms on or near the properties of Plaintiffs and other members of the proposed Class.

41. Niantic undertook the foregoing conduct without authorization from Plaintiffs or other members of the proposed Class.

42. The foregoing conduct has resulted in foreseeable incursions by *Pokémon Go* players onto the property of Plaintiffs and the other members of the proposed Class, thereby invading their use and enjoyment of their properties.

43. The invasion described above remains ongoing, as at the time of the filing of this Complaint, Niantic continued to designate GPS coordinates on or near the properties of Plaintiffs and other members of the proposed Class as Pokéstops and Pokémon gyms in *Pokémon Go*.

44. The foregoing conduct constitutes a nuisance.

45. As a direct and proximate result of Niantic's actions, Niantic is liable to Plaintiffs and the other members of the proposed Class.

COUNT II
(Unjust Enrichment)
(Brought on Behalf of the Plaintiffs and the Class against all Defendants)

46. Plaintiffs repeats, realleges, and incorporates by reference each of the foregoing allegations as though fully set forth herein.

47. Defendants have received and retained a benefit from Plaintiffs and other members of the proposed Class, resulting in inequity.

48. By designating GPS coordinates on or near the properties of Plaintiffs and other members of the proposed Class as Pokéstops and Pokémon gyms in the *Pokémon Go* game, Defendants created a more immersive gaming experience, thereby increasing the game's popularity and profitability, while encouraging millions of *Pokémon Go* players to make incursions onto the properties of Plaintiffs and other members of the proposed Class.

49. As described *supra* at ¶¶ 17-19, each of the Defendants receives a percentage of all revenues generated by *Pokémon Go*.

50. As a result of the foregoing conduct, Defendants have been unjustly enriched.

51. The amount of Defendants' unjust enrichment should be disgorged, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Federal Rule of Civil Procedure 23, and certifying Plaintiffs as the Class representative;

B. Awarding Plaintiffs and the other members of the Class damages, disgorgement or other monetary or equitable relief provided by and pursuant to the common law claims cited above or as the Court deems just proper;

1 C. Enjoining Defendants from continuing the wrongful acts and practices alleged;

2 D. Awarding Plaintiffs and the other members of the Class pre-judgment and post-
3 judgment interest;

4 E. Awarding Plaintiffs and the other members of the Class reasonable attorneys' fees
5 and costs of suit, including expert witness fees; and
6

7 F. Awarding such other and further relief as this Court may deem just and proper.

8 **JURY DEMAND**

9 Plaintiffs demand trial by jury.

10 Dated: August 10, 2016

11
12 Respectfully submitted,

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